IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO.105/2007 & 106/2007

WRIT PETITION NO.105/2007

1.The Assistant Defence Estate Officer
Near Traffic Police Cell,
Police Head Quarters,
Swami Vivekanand Road,
Panaji, Goa.

2.The Director General
Defence Estates (Acq.-II),
Ministry of Defence,
Raksha Sampada Bhavan,
Palam Road,
Delhi, Cantt. 110 010. ..... Petitioners.

V/s.

1. Jose Antonio Braganza
(since deceased) by his LRs.

a) Mrs. Regina Cecilia Sara Braganza,
(widow of late Jose Antonio Braganza)

b) Ms. Romana Guadalup Victoria
Braganza (daughter of late Jose
Antonio Braganza),

c) Mr. Lino Antonio Sacrifamilia
Braganza (son of late Jose Antonio
Braganza),

All residing at Baixo de Igreja,
Agacaim, Ilhas, Goa.

2. The Dy. Collector & LAO.,
O/o Collectorate (North),
Panaji – Goa. …….. Respondents.

Mr. C. A. Fereira, Asst. Solicitor General, with Mr. G. Teles, Advocate for the petitioners.

Mr. E. Dias, Advocate for the respondents 1(a) to 1(c).

WRIT PETITION NO.106/2007

1. The Assistant Defence Estate Officer
Near Traffic Police Cell,
Police Head Quarters,
Swami Vivekanand Road,
Panaji, Goa.

2. The Director General
Defence Estates (Acq.-II),
Ministry of Defence,
Raksha Sampada Bhavan,
Palam Road,
Delhi, Cantt. 110 010. ..... Petitioners.

V/s.

1. Shri Bosco Braganza,
Major of age,
r/o. Gaonkar wada,
Batim Goa Velha,
Tiswadi, Goa.

2. The Dy. Collector & LAO.,
O/o Collectorate (North),
Panaji – Goa. ……. Respondents.

Mr. C. A. Fereira, Asst. Solicitor General, with Mr. G. Teles, Advocate for the petitioners.

Mr. J. A. Lobo, Advocate for the respondent No.1.

CORAM : R.S. MOHITE, J.

DATE : JULY 13, 2007.

ORAL JUDGMENT :

Heard both sides. Rule. By consent, rule made returnable forthwith.

2. The petitioners have filed these petitions against the order passed by the District Judge, Panaji holding that the Judgment debtors had not satisfied the decree fully and directing the Judgment Debtors to make payment of the balance amount within 10 days, failing which the concerned clerk to issue warrant of attachment. This order has been passed by the District Judge on 22.11.06 below an application for attachment of property.

3. It appears that there is a dispute relating to amount which is actually due. Both sides agree that this is a dispute which can be resolved by a mere process of calculation and no evidence is required for deciding this dispute. Both the parties are agreeable that though the impugned order may be set aside, the directions should be given to resolve the dispute relating to calculations of the amount actually due within time-bound period.

4. In the circumstances, the petitions are allowed. Rule is made absolute in terms of prayer clause (a) of the petitions. The District Judge, Panaji is directed to decide the dispute relating to the amount actually due under the final award. It may be stated here that according to the petitioners, nothing is due and payable to the respondents and on the contrary, the respondents are required to make refund. All these contentions may be raised before the District Judge, Panaji. The calculations should be done in accordance with the applicable law. Needless to say that, thereafter, if any amount is found due and payable to the respondents, then the respondents will be at liberty to recover the amount in accordance with law. The District Judge shall dispose off the execution application within a period of 12 weeks.

Both the parties agree to appear before the District Court, Panaji on 18th July, 2007 at 10.00 a.m. The District Judge may take up the matter on Board and may give suitable date for hearing the matter. Authenticated copy of this Judgment be issued to the parties.

R.S. MOHITE, J.

ssm.